

Attorneys for Plaintiffs  
Carole Migden, Friends of Carole Migden  
Committee, and Re-Elect Senator Carole  
Migden Committee

## CAROLE MIGDEN, et al.,

**VS.**

**Defendants.**

**DECLARATION OF ROGER SANDERS  
IN SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION**

Date: April 16, 2008  
Time: 10:00 a.m.  
Crtrm: 25

DECLARATION OF ROGER SANDERS IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION  
- NO. 2:08-CV-00486-EPB

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1. From the date of its establishment on December 18, 2000 until March 2007, I was the treasurer of the campaign committee known as "Friends of Carole Migden," which was established for Carole Migden's 2004 election to the State Senate ("the "2004 Committee"). I also was the treasurer of the campaign committee known as "Re-Elect Assemblywoman Carole Migden," which was established for Carole Migden's 1998 and 2000 Assembly elections (the "Assembly Committee"), and of the "Carole Migden Leadership Committee," which was established for Ms. Migden's 2002 election to the State Board of Equalization. I am not a professional treasurer, but rather took on the task as a volunteer.

3. At that time, Senator Migden was in her last term as a member of the Assembly. She wanted to save the approximately \$900,000 she had left of pre-Proposition 34 campaign funds for use in a future election to a different state office. Indeed, in December 2000, Senator Migden filed a statement of organization to open a committee to run for State Senate in 2004 (the 2004 Committee). In January 2001, Senator Migden filed a statement of organization to run for the Board of Equalization in 2002, using a committee named "Carole Migden Leadership Committee." Senator Migden made it absolutely clear that she intended to run for future office, and that we needed to ensure her ability to use her pre-Proposition 34 campaign funds in such a run. It would be some time, however, before we

1 would know how much of the pre-Proposition 34 money she would need, if any, for either or both of  
2 those races.

3 4. As of March 2001, there were many gray areas about using contributions raised  
4 for a pre-Proposition 34 election in a new campaign. The state Fair Political Practices Commission  
5 had not yet decided how incumbent officeholders like Senator Migden should handle their pre-  
6 Proposition 34 funds. In particular, the FPPC had not decided whether the funds must be kept separate  
7 from funds raised after Proposition 34 went into effect; whether pre-Proposition 34 funds could be  
8 transferred to a future campaign once or multiple times; and whether current campaign expenditures  
9 would be considered coming first from "old" funds or from "new" funds. Although no one knew it at  
10 the time, some of those questions would not be answered fully until early in 2003.

11 5. My greatest concern was protecting Senator Migden's ability to use her pre-  
12 Proposition 34 funds in a future election. I did not want to move those funds into the bank account we  
13 had established for the Board of Equalization or Senate 2004 committee until the FPPC decided  
14 whether the money could only be transferred once. Senator Migden wanted to maintain the maximum  
15 flexibility with those funds, and I was concerned that if we transferred them to one of those accounts  
16 we might not be able to transfer them again. In the absence of guidance from the FPPC on this  
17 question, we agreed that I should transfer the pre-Proposition 34 funds out of her Assembly checking  
18 account into a separate interest-bearing account for use in a future election.

19 6. Therefore, based on the instructions from Senator Migden, and being as careful  
20 as I could be to ensure that the entire \$900,000 in pre-Proposition 34 funds would remain available for  
21 the Senate 2004 race or some other future election, I established a certificate of deposit ("CD") at  
22 Wells Fargo Bank in March 2001, into which I transferred the \$900,000 in pre-Proposition 34 funds.  
23 To open that Wells Fargo account I used the taxpayer identification number that was assigned to the  
24 2004 Committee. That same taxpayer identification number was used for the Assembly Committee  
25 and for the Board of Equalization 2002 committee as well. I had checked with the Internal Revenue  
26 Service and been told that I should use the same number for all of those committees. The bank,  
27 however, continued to associate that taxpayer identification number with the name of the first  
28 committee to use it, which was the Assembly Committee. Thus, although I transferred the \$900,000

1 out of the Assembly account and into a separate account for Ms. Migden's future elections, the  
2 Assembly Committee name appeared on the Wells Fargo CD. I did not think the name on the account  
3 mattered since I had physically transferred the funds out of the Assembly checking account and there  
4 was no reason yet to designate the particular future election they would be used for.

5 7. I checked with the Fair Political Practices Commission's technical assistance  
6 staff to find out how to report the funds that we had moved into the CD. They told me that we had to  
7 maintain a clear audit trail between a committee bank checking account and the CD. Because of that, I  
8 continued to show the CD funds in the cash balance of the Assembly committee's campaign statements  
9 until 2003, even though the funds no longer were in that checking account. The only reason for this  
10 was to maintain a paper audit trail for the FPPC reports. At the time I opened the CD, Senator Migden  
11 was still in office and her pre-Proposition 34 funds were not surplus. There was no question in my  
12 mind that by physically transferring those pre-Proposition 34 funds out of the Assembly committee  
13 checking account and into a separate segregated fund set up for future elections, those funds would not  
14 become surplus. I thus assured Senator Migden that I had taken the steps necessary to maintain the  
15 maximum flexibility with her pre-Proposition 34 funds and allow them to be used for a future election.  
16 I do not believe Senator Migden's pre-Proposition 34 funds ever became surplus because they were  
17 removed from her Assembly Committee before they became surplus, and they are now part of her  
18 2004 Committee funds, an office which she continues to hold.

19 8. When the Wells Fargo CD matured in March 2002, we decided to move the CD  
20 out of Wells Fargo and into an interest-bearing account at Sterling Bank. At Sterling Bank I used the  
21 taxpayer identification number for the 2004 Committee, but the bank put the Assembly Committee  
22 name on the account.

23 9. I am aware that surplus funds cannot be used for a future election. At no time  
24 was I concerned about the \$900,000 in pre-Proposition 34 money being deemed "surplus" because that  
25 money had been transferred out of the Assembly Committee checking account long before  
26 Senator Migden left office, and into a separate account established for a future election. I have always  
27 assured Senator Migden that she could use the funds for a future election.  
28

1 I declare under penalty of perjury, under the laws of the State of California, that the  
2 foregoing is true and correct and that this declaration was executed on March 7, 2008 at  
3 San Francisco, California.

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5 ROGER SANDERS

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I am a citizen of the United States, over the age of 18, and not a party to the within cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

**Declaration of Roger Sanders in Support of  
Plaintiffs' Motion for Preliminary Injunction**

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4 fax transmission is maintained in our files.

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7 accept service by email. No electronic message or other indication that the  
8 transmission was unsuccessful was received within a reasonable time after the  
9 transmission.

10 I declare, under penalty of perjury, that the foregoing is true and correct. Executed on  
11 March 7, 2008, in San Leandro, California.

12   
13 Kristen Snider